

**LEVIN-EPSTEIN & ASSOCIATES, P.C.**

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February 22, 2023

**VIA ECF**

The Honorable Taryn A. Merkl, U.S.M.J.  
U.S. District Court, Eastern District of New York  
225 Cadman Plaza E  
Brooklyn, NY 11201

Re: *Hernandez v. Happy Street LLC et al*  
**Case No.: 1:22-cv-06918-DG-TAM**

Dear Honorable Magistrate Judge Merkl:

This law firm represents plaintiff Aaron Hernandez (the “Plaintiff”) in the above-referenced matter.

Pursuant to the directives in Your Honor’s February 1, 2023 Status Report Order this letter respectfully serves to provide the Court with a status update in the above-referenced action.

This letter further respectfully serves as a request for a *nunc pro tunc* enlargement of time to serve individual defendant Slobodan Radivojevic a/k/a Bob Radivojevic (together, the “Individual Defendants”) and Happy Street Too LLC to, through and including March 31, 2023.

**I. Preliminary Statement**

As set forth more fully below, undersigned law firm intended to proceed with a motion for default judgment as against the non-appearing Defendants<sup>1</sup>, upon completion of service as against each Defendant.

As of the date of this filing:

1. Plaintiff is proceeding with the filing of an application or a clerk’s certificate of default judgment as against the Corporate Defendant Happy Street LLC; and
2. Plaintiff’s process servers are diligently attempting to effect service of the Summons and Complaint on the Individual Defendant and on Happy Street Too LLC.

**II. Legal Argument**

**A. The Court Should Grant a Short Extension of Time to Complete Service on the Individual Defendants**

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<sup>1</sup>“Defendants” refers to defendants Happy Street LLC, Inc. and Happy Street Too LLC (together, the Corporate Defendants”), and the Individual Defendant (collectively with the Corporate Defendants, the “Defendants”).

Rule 4(m) provides, in relevant part:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

*George v. Pro. Disposables Int'l, Inc.*, 221 F. Supp. 3d 428, 432 (S.D.N.Y. 2016) (citing Fed.R.Civ.P. 4(m)).

Under Rule 4(m), a district court must grant a plaintiff an extension of time for service if the plaintiff demonstrates good cause. *Id.* Even in the absence of good cause, however, district courts have discretion to grant extensions of time to effect proper service. *Id.* (citing *Zapata v. City of New York*, 502 F.3d 192, 196 (2d Cir. 2007)); see also *Mares v. United States*, 627 Fed.Appx. 21, 23 (2d Cir. 2015) (summary order) (“Although an extension of time is required when good cause has been shown, a district court has wide latitude in deciding when to grant extensions absent good cause.” (internal citation omitted)).

“Good cause is measured against the plaintiff’s reasonable efforts to effect service and the prejudice to the defendant from the delay, and the court should look to whether the plaintiff was diligent in making reasonable efforts to effect service.” *Id.* (citation omitted).

**i. Good Cause Exists to Extend Plaintiff’s Deadline to Serve the Individual Defendants**

The undersigned has been advised by Plaintiff’s process servers that service on the Individual Defendant and on Happy Street Too LLC is expected to be completed before March 31, 2023.

Out of an abundance of caution, it is respectfully requested that the Court extend Plaintiff’s deadline to serve the remaining non-appearing Defendants to, through and including, March 31, 2023.

**III. Conclusion**

Thank you, in advance, for your time and attention to this matter.

Respectfully submitted,

LEVIN-EPSTEIN & ASSOCIATES, P.C.

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